

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 JANE DOE, a minor, by and through
5 her guardian ad litem, WILFRED
SCOTT;

No. C 11-4759 CW

ORDER DIRECTING
PETITIONER TO
PROVIDE ADDITIONAL
EVIDENCE

6 Plaintiff,

7 v.

8 RYAN GILL; ANTHONY MORGAN; and
9 CITY OF SAN LEANDRO,

10 Defendants.

11 JUDY BROWN; and IMAREE CROSS;

No. C 11-5009 CW

12 Plaintiffs,

13 v.

14 RYAN GILL; ANTHONY MORGAN; and
15 CITY OF SAN LEANDRO,

16 Defendants.

17 ERICKA WHITMEYER

No. C 11-5083 CW

18 Plaintiff,

19 v.

20 RYAN GILL; ANTHONY MORGAN; and
21 CITY OF SAN LEANDRO,

22 Defendants.

23
24 Petitioner Wilfred Scott, as guardian ad litem for Plaintiff
25 Jane Doe, a minor, requests approval of a compromise of Doe's
26 claims against Defendants Ryan Gill, Anthony Morgan and the City
27 of San Leandro.
28

1 Through her guardian ad litem, Scott, Doe initiated this
2 lawsuit on September 23, 2011. In the complaint, Doe alleges
3 that, on December 29, 2010, her mother, Gwendolyn Killings, was
4 shot and killed by Defendants Gill and Morgan, police officers
5 employed by Defendant City of San Leandro. Doe brought claims
6 under 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth
7 Amendment and a survival action against Defendants Gill and
8 Morgan, claims against Defendant City of San Leandro for failure
9 to train and supervise properly, and claims against all Defendants
10 for wrongful death.

11 On January 18, 2012, the Court consolidated Doe's action with
12 the two higher-numbered actions captioned above. The plaintiffs
13 in the other actions are also survivors and heirs of Gwendolyn
14 Killings.

15 Scott filed the instant petition for approval of a minor's
16 compromise on May 3, 2012. In his papers, he represents that the
17 City of San Leandro, on behalf of all Defendants, has agreed to
18 pay a total of \$50,000 to the four Plaintiffs to settle their
19 claims, and that Plaintiffs have agreed to divide this amount
20 equally, so that each will receive \$12,500. He also states that
21 forty percent of Doe's recovery, or \$5,000, will be paid to her
22 attorneys as fees, along with an additional \$311.15 as costs for
23 deposition transcripts and chart reproduction. Thus, Doe's net
24 recovery under the settlement would be \$7,188.85.

25 As the Ninth Circuit recently stated, "District courts have a
26 special duty, derived from Federal Rule of Civil Procedure 17(c),
27 to safeguard the interests of litigants who are minors." Robidoux
28 v. Rosengren, 638 F.3d 1177, 1181 (9th Cir. 2011). "In the

1 context of proposed settlements in suits involving minor
2 plaintiffs, this special duty requires a district court to
3 'conduct its own inquiry to determine whether the settlement
4 serves the best interests of the minor.' " Id. (quoting Dacanay v.
5 Mendoza, 573 F.2d 1075, 1080 (9th Cir. 1978)).

6 The Ninth Circuit has directed that, in conducting this
7 inquiry in cases involving the settlement of a minor's federal
8 claims, district courts should "limit the scope of their review to
9 the question whether the net amount distributed to each minor
10 plaintiff in the settlement is fair and reasonable, in light of
11 the facts of the case, the minor's specific claim, and recovery in
12 similar cases," and should "evaluate the fairness of each minor
13 plaintiff's net recovery without regard to the proportion of the
14 total settlement value designated for adult co-plaintiffs or
15 plaintiffs' counsel — whose interests the district court has no
16 special duty to safeguard." Id. at 1181-82 (citing Dacanay, 573
F.2d at 1078).

18 The Court notes that the percentage of Doe's total recovery
19 to be paid to her counsel appears high. See, e.g., Botello v.
20 Morgan Hill Unified Sch. Dist., 2011 WL 5313965, at *2 (N.D. Cal.)
21 (remarking, in assessing the settlement of a minor's claims, that
22 "a 40% contingency fee strikes the Court as a bit high"). The
23 Court also notes that, as a minor, Doe might have a greater need,
24 and may have suffered greater damages, than the other Plaintiffs.

25 On the current record, the Court is unable to assess properly
26 the fairness of Doe's net recovery. Accordingly, within seven
27 days of the date of this Order, Petitioner shall provide evidence
28 that Doe's net recovery under the settlement is fair and

1 reasonable in light of the strength of her claims, the facts of
2 the case and recovery in other similar cases.

3 IT IS SO ORDERED.

4 Dated: 5/23/2012


CLAUDIA WILKEN
United States District Judge